

DEVELOPMENT CODE

ARTICLE 151.24 NON-CONFORMING USES

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Section 151.24.001

Purpose

- A. Purpose. Within the districts established by this Code or amendments that may later be adopted, there exists:
- (a) lots,
 - (b) structures,
 - (c) uses of land and structures, and
 - (d) signs which were lawful before this Code was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Code or future amendment. It is the intent of this Code to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Code that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this Code to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure; a non-conforming use of land; or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this Code by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Code shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Code and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has

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been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Section 151.24.002

Classification and Continuance of Non-Conformance

- A. Non-Conforming Lots of Record. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Code, notwithstanding limitations imposed by other provisions of this Code. Such lot must be separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Code, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Code, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Code, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Code.

- B. Non-Conforming Uses of Land. Where, at the time of passage or amendment of this Code, lawful use of land exists which would not be permitted by the regulations imposed by this Code, and where such use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:
1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater use of land than was occupied at the effective date of adoption or amendment of this Code;
 2. No such non-conforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of the adoption or amendment of this Code.
 3. If any such non-conforming use of land ceases for any reason for a period of more than six consecutive months or for 18 months during any three-year period, any subsequent use of

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such land shall conform to the regulations specified by this Code for the district in which such land is located.

4. No additional structure not conforming to the requirements of this Code shall be erected in connection with such non-conforming use of land.

C. Non-Conforming Structures. Where a lawful structure exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
2. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Code.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

D. Non-Conforming Uses of Structures. If lawful use involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Code, that would not be allowed in the district under the terms of this Code, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Code in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
2. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Code, but no such use shall be extended to occupy any land outside such building.

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3. Any structure or structure and land in combination in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed;
 4. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three year period (except when government action access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
 5. Where non-conforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.
- E. Non-Conforming Signs. Within 90 days after the effective date of this Code, the owner of any existing sign shall make application to the Director of Community Development for a Zoning Compliance Certificate for each existing sign owned, such application to include size, location, type of structural materials and subject matter.

Any roof, wall or projecting sign, or any ground sign having its principal structural members of metal or concrete, which lawfully existed at the effective date of this Code or upon annexation, and which does not conform to all requirements of this Code for the district in which it is located, shall be considered legally non-conforming and may be continued and maintained; provided, however, that such sign shall not be enlarged, increased in area or height, or relocated, except in conformity with this Code. Upon annexation, only those signs which lawfully existed at the effective date of annexation shall be considered legally non-conforming. On property having multiple street frontages, no additional signage shall be permitted at any location on that property when the aggregate area of existing signs exceeds that permitted by this Code, *Sections 151.10.006.D and 151.10.007.D* of this Code notwithstanding.

Any ground sign which is structurally supported by wooden or other non-permanent materials may be continued and maintained for a period not exceeding two years from the effective date of this Code, whereupon it shall either have been brought into conformity with all regulations of the district in which it is located, or shall have been removed from the premises.

1. Should such non-conforming sign or non-conforming portion of a sign be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this code.

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2. Should such sign be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
 3. When a non-conforming sign and premises in combination is discontinued or abandoned for 12 consecutive months or for 18 months during any three-year period (except when government action impedes access to the premises), the sign shall thereafter be removed and may not be replaced except in conformity with the regulations of the district in which it is located.
 4. Upon written request for consideration from the owner of the property where such discontinued or abandoned non-conforming use exists to the Director of Community Development, the Director may grant a one-time extension, extending the discontinued or abandoned provision of this section for a period not exceeding 12 months.
- F. Repairs and Maintenance. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10 percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure, as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.
- If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.
- G. Record of Non-Conformance. The Director of Community Development shall, immediately after the effective date of this Code, survey and make a complete record of all cases of non-conformance, and maintain such record thereafter, reviewing each case annually or as often as the Council may prescribe. Such record shall include the name and address of owner and occupant, if other than the owner, legal description of the property and classification and description of the non-conformance. The Director of Community Development shall inform the owner of such property by certified mail as to the classification and nature of the non-conformity and the regulations applicable to its continuance; such record shall constitute prima facie evidence of the number, character, and extent of non-conformance existing at the effective date of this Code or any subsequent amendment.